

Decision **DRAFT DECISION OF ALJ VIETH** (Mailed 3/1/2002)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Into
Implementation of Senate Bill 669, As It Affects
California High-Cost Fund A; California High-
Cost Fund B; Universal Lifeline Telephone
Service Trust; Payphone Service Providers
Enforcement; Telecommunications Devices for
the Deaf Interim Placement Committee; Public
Policy Payphone Program; and California
Teleconnect Fund.

Rulemaking 01-08-002
(Filed August 2, 2001)

OPINION ON REMAINING ADVISORY BOARD ISSUES**I. Summary**

Today's decision resolves issues deferred by our September 20, 2001 interim opinion which, in compliance with recent statutory enactments, approved new, interim charters for the telecommunications advisory boards subject to this proceeding and adopted a necessary, related amendment to the Commission's General Order 153. The new charters became effective on October 1, 2001. They authorize the board members serving on each advisory board immediately prior to October 1 to continue to serve on an interim basis, pending our further review. Today, as Pub. Util. Code § 271(a) requires, we establish the criteria (both number of members and membership qualifications) for each of the boards going forward. We discuss these criteria in the body of this decision and we amend each charter to conform, appending the charter amendments as Attachment A.

We direct the Commission's Executive Director to establish a process and timeline for soliciting nominations for appointment to each of the boards, consistent with our adopted criteria and in accordance with the charters, and to make the appointments, as soon as practicable. As a bridge to ensure program continuity while this process is underway, each interim board will continue to serve until the new board has been appointed. Current members may apply for reappointment.

A majority of parties recommend that we merge the Universal Lifeline Telephone Service Trust Marketing Board (ULTSMB) with the Universal Lifeline Telephone Service Trust Administrative Committee (ULTSAC). We amend the ULTSAC charter to do so and we repeal the charter for the ULTSMB. All members of the current ULTSMB and ULTSAC boards shall serve as members of the board of directors of the merged advisory board until new members have been appointed.

We also address outstanding issues concerning the establishment of program budget reserves and a schedule for the financial and compliance audits required by Pub. Util. Code § 274. Finally, we adopt a uniform interest rate to apply to the late payment of reimbursement and carrier claims under the payment schedule approved in our interim opinion.

II. Background

Decision (D.) 01-09-064, our September 20, 2001, decision in this proceeding, identified a number of issues for further consideration.¹

¹ We modified D.01-09-064 in D.01-10-042 to correct clerical errors in two of the charters.

Subsequently, the November 15, 2001, Assigned Commissioner's ruling established a process and schedule for this additional review. The ruling designated the most contentious issue -- whether and how to change the membership of each advisory board -- for workshop discussion on January 9, 2002. The ruling established that this workshop would be facilitated by the Commission's Strategic Planning Division and directed interested parties to prepare and serve pre-workshop and post-workshop position statements. The ruling also requested written comment on three other issues:

- Establishment of a budget reserve for the California High Cost Fund-A Administrative Committee (CHCFA-AC), the California High Cost Fund-B Administrative Committee (CHCFB-AC) and the California Teleconnect Fund Administrative Committee (CTF-AC);
- Establishment of schedules for compliance and financial audits of the CHCFA-AC, CHCFB-AC and CTF-AC; and
- Adoption of a uniform interest rate for late payment of reimbursement and carrier claims by the Commission.

Interested parties filed opening comments on these issues on December 21, 2001 and reply comments on January 7, 2002.²

The workshop on membership issues was held as directed and, during the course of the workshop, participants asked the workshop facilitator to convey

² These parties filed opening comments: jointly, CHCFA-AC, CHCFB-AC and CTF-AC; Office of Ratepayer Advocates (ORA); jointly, Pacific Bell Telephone Company and Verizon California, Inc. (Pacific Bell/Verizon); and jointly, fourteen small local exchange carriers (LECs) referred to as the small LECs. The small LECs also filed reply comments.

their requests for additional time to prepare post-workshop position statements and for leave to file those statements in the formal file of this proceeding. By ruling on January 11, 2002, the assigned Administrative Law Judge (ALJ) granted these requests. The ruling recognized that detailed position statements reflecting a narrowing of the disagreement could render a workshop report superfluous and advised that the report might be cancelled. Interested parties filed post workshop position statements on January 17 and January 31, 2002.³

III. Advisory Board Membership Issues

Pub. Util. Code §§ 270-281 comprise Chapter 1.5, entitled “Advisory Boards,” found at Part 1 of Division 1 of the Code.⁴ Section 271(a) establishes the Commission’s authority to determine criteria for advisory board membership and to appoint the members, as follows:

The Commission shall establish the number of, and qualifications for, persons to serve as members of each board,

³ Three parties filed post-workshop position statements on January 17: opening comments: jointly, CHCFA-AC, CHCFB-AC and CTF-AC; jointly, ULTSAC and ULTSMB; and Payphone Service Providers Committee (PSPC). Nine parties filed post-workshop position statements on January 31: ORA; jointly, Pacific Bell/Verizon; jointly, the small LECs; California Payphone Association; California Payphone Regulatory Alliance; jointly, Latino Issues Forum and Greenlining Institute (LIF/Greenlining); California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (the Coalition); Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC); and FONES4ALL. In addition, the Commission’s Consumer Services Division (CSD) served a position statement on January 31. Inadvertently, CSD did not file the statement and by motion filed on February 21, has requested leave to file, late. The late filing will prejudice no party and we grant CSD’s motion.

⁴ Article 1.5 was enacted by Senate Bill (SB) 669 (Stats. 1999, Ch. 677) and amended by SB 742 (Stats. 2001, Ch. 118).

and shall appoint the members of each board. In determining the qualifications of persons who will serve as members of each board, *the commission shall consider the purpose of the program, and shall attempt to achieve balanced public participation*, for each board. The *membership of each board shall reflect, to the extent possible, and consistent with existing law, the ethnic and gender diversity of the state.* (Pub. Util. Code § 271(a), emphasis added.)

This statute, together with the rest of Article 1.5, is the legal standard we must follow and, accordingly, we review parties' post-workshop position statements against this standard. We conclude that we do not require a workshop report. The parties' post-workshop position statements have been filed in the formal file of this proceeding pursuant to the ALJ's ruling and, for the most part, the position statements provide a detailed and comprehensive iteration of workshop participants' final views.

While the position statements do not exhibit unanimity about advisory board membership issues, they evidence less disagreement than the rounds of comments filed much earlier in this proceeding. In general, they also demonstrate a clearer understanding of advisory board roles in the aftermath of structural changes mandated by SB 669, as amended by SB 742, and implemented under the new, interim charters we approved last September. As several parties note, January 31, 2002, the deadline for filing the position statements, also marked four months of actual experience under these new charters, experience which clearly has informed the parties' views and, in some instances, has caused them to reconsider and even reverse positions taken previously.

All of these factors influence today's decision, leading us to a few broad conclusions applicable to each of the advisory boards subject to this proceeding,

as well as to a board-specific, final membership composition. The position statements persuade us that:

- Boards should have an uneven number of members in order to avoid voting deadlocks. We think this is a prudent means to prevent stalemate. We remind parties that the majority vote of an advisory board may have the force of a recommendation to the Commission, but cannot independently establish, revise or implement policy. Only the Commission can do those things and, moreover, Commission actions must meet the public notice and comment requirements of Pub. Util. Code § 1708, where that statute applies.
- Each board member should have one vote. As several parties pointed out earlier in this proceeding, affording “non-voting” status to any board member creates potential problems under Pub. Util. Code § 271(c), (d) and (e) which govern voting requirements, including establishment of a quorum.⁵
- Charters should describe the types of interests and interest groups that should be represented on a board but, in general, should not name specific organizations or entities. We agree with CSD that with the exception of ORA (and possibly certain state agencies) no organization or entity

⁵ The DDTPAC and its related committees have experienced these quorum and voting problems. (See D.01-07-023, as modified by D.02-01-018, in Rulemaking (R.) 00-05-001.) With respect to alleged conflict of interest issues if telecommunications carriers are afforded a vote, we note the following: today’s decision does not give carriers a majority voting position on any of the advisory boards at issue in this proceeding and, moreover, none of these advisory boards has management or control of the surcharge revenues which fund the associated programs or authority to order expenditures of these revenues.

should have a seat on any board “locked-in” or otherwise guaranteed.

- With the exception of ORA, Commission staff should not serve as advisory board members. Pub. Util. Code § 271(a) specifies “balanced *public* participation” and we interpret that directive to require, generally, that persons and representatives of organizations outside the Commission (not our own staff) serve as board members. ORA’s situation is unique, owing to its separate statutory existence under Pub. Util. Code § 309.5, including its statutory mission to represent utility customers and the fact that its director is appointed by the Governor of this state rather than the Commission. All boards will continue to have the services and input of the non-voting staff liaisons, as provided in each of the charters.
- Board members should be entitled to per diem and expenses for service on a Commission-authorized subcommittee of the board. An advisory board shall apply to the Commission by advice letter for establishment of a subcommittee and shall explain the need for the subcommittee, the proposed number of persons to serve on the subcommittee and the proposed frequency of subcommittee meetings. While we agree that a subcommittee may advance the work of a board effectively and efficiently, we must monitor administrative costs, including per diem and expenses, to ensure appropriate expenditure of the surcharge revenues collected from utility ratepayers.

In the subsections below, we discuss the membership composition of each of the advisory boards. We have appended to this decision, as Attachment A, corresponding modifications for each of the advisory board charters. These charter modifications will take effect 30 days from the effective date of today’s

decision, with the proviso that the current board of directors of each advisory board shall continue to serve until the new board has been appointed.

We delegate to the Commission's Executive Director the responsibilities for establishing a process and timeline for soliciting nominations for appointment to each of the boards, consistent with our adopted criteria and in accordance with the charters, and for making those appointments, as soon as may be practicable.

With the passage of time and additional, actual experience, it may become necessary or desirable to reexamine today's decision and to modify these advisory board charters further. However, today's decision resolves all issues deferred by our interim opinion and closes this proceeding.

A. California High Cost Fund-A Administrative Committee

D.01-09-064 authorizes the CHCFA-AC board members serving on September 1, 2001 to serve, as interim members, beginning on October 1, 2001. The interim CHCFA-AC board is a three-member board consisting of staff from the Commission's Legal and Telecommunications Divisions.

Pub. Util. Code § 271(a) requires that we consider the purpose of the underlying program as we formulate the composition of each of the boards going forward. In summary, the CHCFA-AC program "provides transfer payments to small independent telephone corporations providing local exchange services in high-cost rural and small metropolitan areas in the state in order to create fair and equitable local rate structures..." (Charter of the CHCFA-AC, Article Two: Purpose.)

After considering the various party proposals, we are persuaded to adopt a five-member board, composed of one representative from each of the following:

- A large or mid-sized LEC, since the ratepayers of these carriers fund the program
- A small LEC or competitive local exchange carrier (CLEC), since these companies and their ratepayers are the beneficiaries of the program
- A community based organization (CBO) or consumer organization whose constituency includes those residing in areas of this state which lack telecommunications infrastructure
- A CBO or consumer organization whose constituency includes those residing in urban communities in this state that are both high-cost and low-income.
- ORA

This structure follows ORA's suggestions in large part but does not make the carriers non-voting board members, for reasons discussed above. We disagree with the small LECs' view that the large, mid-sized and competitive LECs have no interest in the CHCFA-AC and therefore need not be included. We also disagree with the interim board's suggestions that the board consist of three carrier and two consumer members. The configuration we adopt today should provide the balanced, broad-spectrum public input Pub. Util. Code § 271(a) requires. Should this configuration prove problematic for reasons unforeseen today, we can revise board membership accordingly.

We do not endorse, at this time, ORA's suggestion that we modify the CHCF-AC Charter (or the charters of other boards) to expand upon the explanation of the board's duties by detailing them with greater specificity. The existing broad language should encompass any specific requests the Commission may make of the board and likewise, should permit the board to formulate and, report to us upon a reasonable range of issues related to the underlying program and the program budget. Staff liaisons in the Commission's Legal, Information and Management Services and Telecommunications Divisions will continue to provide administrative and legal assistance, as provided in the CHCFA-AC Charter.

B. California High Cost Fund-B Administrative Committee

D.01-09-064 authorizes the CHCFB-AC board members serving on September 1, 2001 to serve, as interim members, beginning on October 1, 2001. Like the interim CHCFA-AC, the interim CHCFB-AC board is a three-member board consisting of staff from the Commission's Legal and Telecommunications Divisions.

The central purpose of the CHCFB-AC program is to provide "transfer payments to telephone corporations providing local exchange services in high-cost areas in the state to create fair and equitable local rate structures..." (Charter of the CHCFB-AC, Article Two: Purpose.)

The party proposals for the CHCFB-AC parallel the CHCFA-AC proposals and we reach a similar solution for similar reasons. We adopt a five-member board, composed of one representative from each of the following:

- A large LEC, since the ratepayers of these carriers fund the program

- A mid-sized LEC or CLEC, since these companies and their ratepayers are the beneficiaries of the program
- A CBO or consumer organization whose constituency includes those residing in areas of this state which lack telecommunications infrastructure
- A CBO or consumer organization whose constituency includes those residing in urban communities in this state that are both high-cost and low-income
- ORA

Underscoring the similarity between the purposes of the CHCFA-AC and CHCFB-AC, ORA suggests that some of the members could serve on both committees and that the committees could hold back to back meeting on the same day. We will authorize the Executive Director to make the same appointments to both boards to the extent the interests of administrative efficiency and balanced public participation intersect and warrant that result.

C. California Teleconnect Fund Administrative Committee

D.01-09-064 authorizes the board members serving on September 1, 2001 to serve, as interim members of the CTF-AC, beginning on October 1, 2001. Like the interim CHCFA-AC and CHCFB-AC boards, the interim CTF-AC is a three-member board consisting of staff from the Commission's Legal and Telecommunications Divisions.

The CTF-AC program was established "to advance universal service goals by providing discounted rates for information age technologies available to qualifying schools, libraries, hospitals, health clinics, and community

organizations, consistent with Chapter 278 of the statutes of 1994.” (See Charter of the CTF-AC, Article Two: Purpose and R.01-08-002 at p.4.)

Each of the parties that addressed the composition of the CTF-AC suggests we increase board membership. ORA proposes eight members, including a non-voting position for a telecommunications carrier; the interim CTF-AC and Pacific Bell/Verizon propose nine members. After reviewing all comments on the CTF-AC, we adopt a seven-member board comprised of one representative for each of the following interests and interest groups:

- The Education sector (such as the California Department of Education)
- The public library sector (such as the California State Library)
- Public hospitals/clinics
- Rural clinics/telemedicine
- A CBO involved in public access Internet, such as a nonprofit community technology center
- A large or mid-sized LEC
- ORA

ORA’s position statement notes that in recent years the underlying program has successfully supported the spread of advanced telecommunications technologies to schools and public libraries but has had minimal impact on other target areas, such as public health care and community-level endeavors. The CTF-AC proposal, which includes a board seat for a LEC, another for a CLEC and a third for a private school, does not earmark a seat for health care. We

address this problem by recognizing that health care information technology needs (in both urban and rural public medicine sectors) must be afforded heightened attention if we are to meet the objectives of the underlying program. We designate a board seat for each sector. Likewise, we designate a board seat for a CBO in order to renew focus on the local community aspect of the underlying program. Because our primary focus is on the specified program purposes, we do not designate a seat on the CTF-AC advisory board for a representative of the deaf/disabled community per se. All meetings of the CTF-AC are public, and members of this community (whether as individuals, as board members from the DDTPAC, or as the authorized representatives of other organizations) are free to attend and speak at the meetings, as are members of the broader public. Moreover, nothing bars the CTF-AC, or any other board, from actively inviting a presentation by those representing a specific interest.

D. Payphone Service Providers Committee

D.01-09-064 adopts a charter for the PSPC that recognizes the origins of the three programs that fall under its auspices pursuant to Pub. Util. Code § 279(a). These programs were originally known as the Payphone Service Providers Enforcement (PSPE) program, the Public Policy Payphone Program (PPPP) and the Telecommunications Devices for the Deaf Interim Placement Committee Program (TPIC). The purpose of the PSPC is:

to advise the [Commission] regarding the development, implementation, and administration of programs to educate payphone service providers (PSPs), ensure compliance with the Commission's requirements for payphone operations, and educate consumers on matters related to payphones, as provided for in Commission Decision (D.) 90-06-018 and D.98-11-029, and to provide for the placement of telecommunications devices capable of servicing the needs of the deaf or the hearing impaired in existing buildings and public accommodations, as specified in Pub. Util. Code § 2881.2(a). (Charter of the PSPC, Article Two: Purpose.)

Recognizing the substantial overlap on the boards of the former PSPE and TPIC, as an interim measure D.01-09-064 combines these boards on the PSPC (we had not approved a charter for the PPPP at the time D.01-09-064 issued). Thus, the interim PSPC consists of a seven-member board composed of representatives from two telecommunications carriers, the Commission staff, the DDTP, a consumer organization, and three payphone associations. D.01-09-064 also provides for coassignment on the PSPC of the chairs and the vice-chairs of the former PSPE and TPIC. Some parties had argued that the TPIC should be established as a separate subcommittee of the PSPC and we deferred that issue, together with the other membership issues before us today.

The PSPC position statement states that the chair coassignment has worked well, enabling board members to take up payphone- or TPIC-specific issues under the leadership of the appropriate chair while considering common issues jointly. However, two other parties (DDTPAC and the Coalition) argue that TPIC interests are more closely aligned with DDTPAC than with PSPC, and that, therefore, we should place TPIC under the DDTPAC. We do not review the merits of this proposal in today's decision, because, absent a statutory amendment that redefines the purposes of both PSPC and DDTPAC, we lack authority to order such a transfer; accordingly, we confine our discussion to the scope of the issues identified for consideration in this proceeding. For the same reason, we do not address the suggestion in the PSPC position statement that we consider transferring the PPPP program to one or both of the two high-cost fund programs because they subsidize service in the high cost areas typically found in rural, low-density parts of the state.

We will continue chair coassignments on the reconfigured PSPC. We are persuaded to adopt a five-member board comprised of one representative from each of the following interest groups:

- A large or mid-sized LEC
- A payphone association representative
- A consumer organization, CBO, senior group or individual with interest or expertise in the payphone area and universal service
- The deaf or hearing impaired community
- ORA

This board composition, while drawn largely from the ORA and CSD proposals, does not wholly endorse either one. For reasons discussed previously, we seek public input on PSCP, as well as other advisory boards, from those outside the ranks of Commission staff. We do not appoint the Public Advisor to this board, as ORA and CSD suggest, because pursuant to Pub. Util. Code § 321, the function of that office is to assist members of the public who wish to participate in Commission proceedings, not to represent the public in those proceedings.⁶ We decline to establish three seats on the board for payphone association representatives since we do not agree that doing so will provide us with balanced advice on PSCP issues. Again, we reiterate that advisory board meetings are public; members of the public may attend such meetings and each charter provides an opportunity for the public to address board members at such meetings.

**E. Universal Lifeline Telephone Service Trust
Administrative Committee**

D.01-09-064 adopts two charters, one for the Universal Lifeline Telephone Service Trust Administrative Committee (ULTSAC) and one for the Universal Lifeline Telephone Service Trust Marketing Board (ULTSMB), an adjunct to the former. The decision authorizes the board members serving on September 1, 2001 to serve, as interim members, beginning on October 1, 2001. For the ULTSAC, this is a five-member board composed of two consumer representatives and three Commission staff; for the ULTSMB, a 12-member

⁶ Pub. Util. Code § 321 also provides that the Public Advisor shall advise the Commission “on procedural matters relating to public participation” in our proceedings.

board with eight carrier representatives (four are vacant), one Commission staff member, a representative of ORA and two members from consumer organizations.

The joint ULTSAC/ULTSMB position statement recommends that we merge the two boards and, with the exception of FONE4ALL, all parties, including Greenlining/LIF, agree. Following transfer to the State Treasury on October 1, 2001, of the surcharge revenues that fund the programs, the boards have no “hands on” management or control over these monies and no longer pay claims. Only FONE4ALL argues that the responsibilities of the two boards remain so distinct as to militate against merging them.

The charter of the interim ULTSAC defines the board’s core advisory purpose as “to ensure lifeline telephone service is available to the people of the state, as provided by the Moore Universal Telephone Service Act, Pub. Util. Code § 871 et seq... .” (Charter of the ULTSAC, Article Two: Purpose.) The more specialized purpose of the ULTSMB is “to advise the [Commission] concerning the marketing of the Universal Lifeline Telephone Service (ULTS) program in a competitive environment...” and “shall focus on achieving the ULTS program goal of providing basic telephone service to all qualifying low-income households.” (Charter of the ULTSMB, Article Two: Purpose.)

Clearly, the broader charter of the ULTSAC can accommodate the ULTSMB charter and comparison of the membership of the interim boards reflects some common interests with common representation. The parties’ comments persuade us that the advisory work of both the ULTSAC and the ULTSMB can be performed successfully under a single umbrella and, possibly, with smaller administrative overhead. Quite simply, the lower the administrative expenses, the greater the sum available for core program

purposes. Therefore, we will authorize the merger of the two boards, consistent with the charter revisions in Attachment A, which provide for the ULTSMB within the ULTSAC charter.

We adopt a new, seven-member board composed of one representative from each of the following:

- A large or mid-sized LEC
- An inter-exchange carrier (IEC)
- A CLEC or wireless carrier
- Two consumer organizations, each of whom represents a different constituency, based on geographic or economic criteria, on language, or on other criteria which reasonably influence lack of access to basic telephone service;
- A CBO
- ORA

This composition is slightly smaller than the eight- to 12-member range ORA proposes but for reasons previously discussed, it does not include Commission staff. It reduces the number of telecommunications carrier seats on the current, interim ULTSMB, recognizing that half of those are vacant. The ULTSAC/ULTSMB joint comments urge that we reappoint all sitting members of the ULTSMB to the new, merged board to ensure continuity of present ULTSMB activities. We do not do that today because we delegate the nomination, selection and appointment process to the Executive Director. Certainly, all those presently serving on the ULTSMB, who desire to continue

serving, may seek reappointment; so too, may the current members of the other boards.

IV. Other Issues

A. Budget Reserve

All parties who filed comments state that a budget reserve is necessary for CHCFA-AC, CHCFB-AC and CTF-AC, given the difficulty of accurately predicting carrier claims 13 months ahead, which the budget process necessitates. ORA suggests that all boards subject to this proceeding should be permitted to include an appropriate, annual budget reserve. We agree.

Parties variously suggest a 10% reserve, which may be insufficient and a larger, three-month reserve, which some boards have used in the past. We will authorize each board to propose an appropriate reserve in its next budget. Each board should include the calculations and any other information necessary to justify the reserve requested. At the discretion of the Director, the Telecommunications Division may hold a workshop on this topic since all charters provide for a Telecommunications Division staff liaison to assist each board in the preparation of its annual budget.

We agree with the joint comments of CHCFA-AC/CHCFB-A/CTF-AC that appropriation of an authorized budget reserve should expire at the end of the budget period and accordingly, as a matter of fiscal control, we will not approve carrying any unexpended appropriation over into the next budget period.

B. Compliance and Financial Audits

For the most part, parties' comments recognize that Pub. Util. Code § 274 requires the Commission to conduct "a financial and compliance audit of program-related costs and activities at least once every three years," beginning

January 1, 2000, for all programs, not merely those associated with CHCFA-AC, CHCFB-AC and CTF-AC. While no parties propose a schedule, many recognize the need to factor audit costs into a board's annual budget. Therefore, we ask the Director of the Commission's Telecommunications Division to develop an audit schedule and to make it available to the boards, through the Telecommunications Division staff liaison, in sufficient time that affected boards may include audit costs in the proposed budget for the fiscal year or years in which the audit costs will be incurred.

C. Uniform Interest Rate

At present, various Commission decisions apply either the three-month commercial paper rate or the seven-day compound yield on taxable money market funds published each Thursday in the Wall Street Journal. All parties agree that use of a uniform interest rate would simplify the billing cycle payment process and potentially could speed review and payment of claims. We adopt the use of the three-month commercial paper rate issued by financial institutions because, as the joint comments of CHCFA-AC, CHCFB-AC and CTF-AC point out, these interest rates are readily available at the Federal Reserve Board website. We think this interest rate fairly represents the changing time value of money and decline to use the 10% interest rate imposed on unpaid judgments in California, which the small LECs propose.

D.01-09-064, Attachment C, establishes a payment schedule for carrier claims (defined as amounts previously ordered by the Commission, such as high cost fund payments, etc.) and for all other requests and invoices (such as TECs, etc.) and this interest rate will apply to the any late payments made on payments processed in the first payment cycle after the effective date of this decision.

V. Comments on Draft Decision

The draft decision was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7(b) of the Rules of Practice and Procedure.

Findings of Fact

1. A workshop report is unnecessary since the parties' post-workshop position statements provide a detailed and comprehensive iteration of workshop participants' final views.
2. Boards should have an uneven number of members in order to avoid voting deadlocks.
3. Each board member should have one vote.
4. With the exception of ORA, Commission staff should not serve as advisory board members.
5. Charters should describe the types of interests and interest groups that should be represented on a board, but in general should not name specific organizations or entities.
6. Board members should be entitled to per diem and expenses for service on a Commission-authorized subcommittee of the board.
7. The amendments to the advisory board charters appended to this decision as Attachment A, and the concurrent repeal of the charter for the ULTSMB, comply with the requirement of Pub. Util. Code § 271(a).
8. To ensure the continuity of the programs associated with each board, the current board of directors of each advisory board should continue to serve until the new members have been appointed, except that all members of the current ULTSMB and ULTSAC boards should serve as interim members of the new, merged board.

9. Given the difficulty of accurately predicting carrier claims and other expenses 13 months ahead, which the budget process necessitates, it is reasonable to permit each board to propose a budget reserve in its annual budget.

10. Given the difficulty of accurately predicting carrier claims and other expenses 13 months ahead, which the budget process necessitates, it is reasonable to permit each board to propose a budget reserve in its annual budget.

11. It is reasonable to apply the uniform interest rate adopted by this decision to any late payments beginning with payments processed in the first payment cycle after the effective date of this decision.

Conclusions of Law

1. We should adopt the amendments to each of the advisory board charters appended to this decision as Attachment A and repeal the charter for the ULTSMB.

2. The Commission's Executive Director should establish a process and timeline for soliciting nominations for appointment to the board of directors of each of these advisory boards and should make the appointments, consistent with this decision and each of the amended charters, as soon as practicable.

3. Pub. Util. Code § 274 requires a financial and compliance audit of program-related costs and activities for each advisory board.

4. The three-month commercial paper rate issued by financial institutions fairly represents the changing time value of money.

5. No party will be prejudiced if we grant CSD's motion to file its post-workshop position statement late.

6. In order to permit orderly and timely compliance with this decision, yet minimal disruption to the programs associated with each of these advisory boards, this order should be effective today, to the extent provided in the Ordering Paragraphs.

O R D E R

IT IS ORDERED that:

1. The amendments to advisory board charters for the California High Cost Fund-A Administrative Committee, California High Cost Fund-B Administrative Committee, California Teleconnect Fund Administrative Committee, Payphone Service Providers Committee, which are all appended to this decision as Attachment A, are adopted and shall take effect 30 days from the effective date of this decision, with the proviso that the current board of directors of each advisory board shall continue to serve until the new members have been appointed consistent with Ordering Paragraph 3.

2. The Universal Lifeline Telephone Service Trust Marketing Board (ULTSMB) is merged with the Universal Lifeline Telephone Service Trust Administrative Committee (ULTSAC) and the charter for the ULTSMB is repealed, effective 30 days from the effective date of this decision. However, upon this merger, all members of the current ULTSMB and ULTSAC boards shall serve as members of the board of directors and shall continue to serve until new members have been appointed consistent with Ordering Paragraph 3.

3. The Commission's Executive Director shall establish a process and timeline for soliciting nominations for appointment to the board of directors of each of these advisory boards and shall make the appointments, consistent with this decision and each of the amended charters, as soon as may be practicable.

4. Board members shall be entitled to per diem and expenses for service on a Commission-authorized subcommittee of the board. An advisory board shall apply to the Commission by advice letter for establishment of a subcommittee and shall explain the need for the subcommittee, the proposed number of persons to serve on the subcommittee and the proposed frequency of subcommittee meetings.

5. Each advisory board shall propose an appropriate budget reserve in its next budget and shall include the calculations and any other information necessary to justify the reserve requested. Appropriation of the authorized budget reserve shall expire at the end of the budget period and any unexpended appropriation shall not be carried over into the next budget period.

6. The Director of the Commission's Telecommunications Division shall develop a schedule for a financial and compliance audit of program-related costs and activities for each advisory board, as required by Pub. Util. Code § 274, and shall make the schedule available to each board, through the Telecommunications Division staff liaison, in sufficient time that each affected board may include audit costs in its proposed budget for the fiscal year or years in which the audit costs will be incurred.

7. We adopt the three-month commercial paper rate issued by financial institutions (available at the Federal Reserve Board website) as the uniform interest rate applicable to late payment of reimbursement and carrier claims, beginning with payments processed in the first payment cycle after the effective date of this decision.

8. Any portion of every prior Commission decision or resolution that conflicts with these ordering paragraphs is disapproved.

9. The February 21, 2002 motion of the Commission's Consumer Services Division to file, late, the post-workshop position statement due on January 31, 2002, is granted.

10. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

Amendments are represented by *italics* (added text) and ~~striketthrough~~ (deleted text) for the following charters:

1. CHARTER of the CALIFORNIA HIGH-COST FUND-A ADMINISTRATIVE COMMITTEE
2. CHARTER of the CALIFORNIA HIGH-COST FUND-B ADMINISTRATIVE COMMITTEE
3. CHARTER of the CALIFORNIA TELECONNECT FUND ADMINISTRATIVE COMMITTEE
4. CHARTER of the PAYPHONE SERVICE PROVIDERS COMMITTEE
5. CHARTER of the UNIVERSAL LIFELINE TELEPHONE SERVICE TRUST
ADMINISTRATIVE COMMITTEE

Because the following charter is repealed, it is not reproduced here:

1. CHARTER of the UNIVERSAL LIFELINE TELEPHONE SERVICE MARKETING BOARD

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CHARTER

of the

CALIFORNIA HIGH-COST FUND-A

ADMINISTRATIVE COMMITTEE

Amend as follows:**3. ARTICLE THREE: MEMBERSHIP**

3.1 Members. *The board of directors of the CHCFA-AC shall be composed of five members consisting of one representative of each of the following: a large or mid-sized local exchange carrier (LEC); a small LEC or competitive local exchange carrier; a community based organization (CBO) or consumer organization whose constituency includes those residing in areas of this state which lack telecommunications infrastructure; a CBO or consumer organization whose constituency includes those residing in urban communities in this state that are both high-cost and low-income; the Commission's Office of Ratepayer Advocates. Until the Commission's Executive Director makes these appointments in accordance with Section 3.2, the* The persons serving as members of the CHCFA-AC on September 30, 2001 shall serve, beginning October 1, 2001, as interim members of the Committee. ~~As soon as practicable, the Commission shall establish the number and qualifications of members of the Committee, pursuant to Pub. Util. Code § 271(a), and designate the classes of membership, if any, whereupon selection shall proceed in accordance with Paragraph 3.2.~~

3.2 Selection. Upon the establishment by the Commission of the number and qualifications of members of the CHCFA-AC pursuant to Pub. Util. Code § 271(a), members shall be nominated by the organizations or constituencies they are to represent. The Commission's Executive Director shall

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select and approve members, in accordance with procedures adopted by the *Executive Director Commission*.

....

3.8 Expenses and Per Diem. Members of the CHCFA-AC who are not employees of utilities, the Commission, or other governmental agencies of the State of California shall be entitled to reimbursement from the Committee Fund of reasonable expenses and/or per diem incurred in connection with their service on the Committee *or subcommittees of the Committee authorized by the Commission*, in accordance with Pub. Util. Code § 271(f). [footnote omitted] The per diem shall be \$300 for each day of meetings attended by the eligible members or \$200 if the meeting lasts for less than approximately two hours.

There shall be no per diem for preparation work; ~~and there shall be no per diem for or expense reimbursement related to meetings of any subcommittees of the CHCFA-AC.~~ For each CHCFA-AC member who is an employee of a governmental agency of the State of California, trade association, or consumer group, payments for per diem and expense reimbursement related to the member's participation in the CHCFA-AC shall go to the member's employer unless the member can show justification for receiving these monies directly.

Eligible Committee members must seek reimbursement of travel expenses and per diem through the state's Travel Expense Claim (TEC) process. Completed TECs must be submitted to the Commission's Telecommunications Division for review. The Director of the Telecommunications Division will assign a designated staff member to review, and if appropriate, approve payment.

Committee members shall not be eligible to receive intervenor compensation under Pub. Util. Code § 1801 et seq. for their work related to the CHCFA-AC.

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ATTACHMENT A
CHARTER
of the
CALIFORNIA HIGH-COST FUND-B
ADMINISTRATIVE COMMITTEE

Amend as follows:

3. ARTICLE THREE: MEMBERSHIP

3.1 Members. *The board of directors of the CHCFB-AC shall be composed of five members consisting of one representative of each of the following: a large local exchange carrier (LEC); a mid-sized LEC or competitive local exchange carrier; a community based organization (CBO) or consumer organization whose constituency includes those residing in areas of this state which lack telecommunications infrastructure; a CBO or consumer organization whose constituency includes those residing in urban communities in this state that are both high-cost and low-income; the Commission's Office of Ratepayer Advocates. Until the Commission's Executive Director makes these appointments in accordance with Section 3.2, the* The persons serving as members of the CHCFB-AC on September 30, 2001 shall serve, beginning October 1, 2001, as interim members of the Committee. ~~As soon as practicable, the Commission shall establish the number and qualifications of members of the Committee, pursuant to Pub. Util. Code § 271(a), and designate the classes of membership, if any, whereupon selection shall proceed in accordance with Paragraph 3.2.~~

3.2 Selection. Upon the establishment by the Commission of the number and qualifications of members of the CHCFB-AC pursuant to Pub. Util. Code § 271(a), members shall be nominated by the organizations or constituencies they are to represent. The Commission's Executive Director shall

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select and approve members, in accordance with procedures adopted by the *Executive Director Commission*.

....

3.8 Expenses and Per Diem. Members of the CHCFB-AC who are not employees of utilities, the Commission, or other governmental agencies of the State of California shall be entitled to reimbursement from the Committee Fund of reasonable expenses and/or per diem incurred in connection with their service on the Committee *or subcommittees of the Committee authorized by the Commission*, in accordance with Pub. Util. Code § 271(f). [footnote omitted] The per diem shall be \$300 for each day of meetings attended by the eligible members or \$200 if the meeting lasts for less than approximately two hours.

There shall be no per diem for preparation work; ~~and there shall be no per diem for or expense reimbursement related to meetings of any subcommittees of the CHCFB-AC.~~ For each CHCFB-AC member who is an employee of a governmental agency of the State of California, trade association, or consumer group, payments for per diem and expense reimbursement related to the member's participation in the CHCFB-AC shall go to the member's employer unless the member can show justification for receiving these monies directly.

Eligible Committee members must seek reimbursement of travel expenses and per diem through the state's Travel Expense Claim (TEC) process. Completed TECs must be submitted to the Commission's Telecommunications Division for review. The Director of the Telecommunications Division will assign a designated staff member to review, and if appropriate, approve payment.

Committee members shall not be eligible to receive intervenor compensation under Pub. Util. Code § 1801 et seq. for their work related to the CHCFB-AC.

....

ATTACHMENT A
CHARTER
of the
CALIFORNIA TELECONNECT FUND
ADMINISTRATIVE COMMITTEE

Amend as follows:

3. ARTICLE THREE: MEMBERSHIP

3.1 Members. *The board of directors of the CTF-AC shall be composed of seven members consisting of one representative of each of the following: the education sector; the public library sector; public hospitals/clinics; rural clinics/telemedicine; a community based organization involved in public access Internet, such as a nonprofit community technology center; a large or mid-sized local exchange carrier; the Commission's Office of Ratepayer Advocates. Until the Commission's Executive Director makes these appointments in accordance with Section 3.2, the* ~~The persons serving as members of the CTF-AC on September 30, 2001 shall serve, beginning October 1, 2001, as interim members of the Committee. As soon as practicable, the Commission shall establish the number and qualifications of members of the Committee, pursuant to Pub. Util. Code § 271(a), and designate the classes of membership, if any, whereupon selection shall proceed in accordance with Paragraph 3.2.~~

3.2 Selection. Upon the establishment by the Commission of the number and qualifications of members of the CTF-AC pursuant to Pub. Util. Code § 271(a), members shall be nominated by the organizations or constituencies they are to represent. The Commission's Executive Director shall select and

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approve members, in accordance with procedures adopted by the *Executive Director Commission*.

....

3.8 Expenses and Per Diem. Members of the CTF-AC who are not employees of utilities, the Commission, or other governmental agencies of the State of California shall be entitled to reimbursement from the Committee Fund of reasonable expenses and/or per diem incurred in connection with their service on the Committee *or subcommittees of the Committee authorized by the Commission*, in accordance with Pub. Util. Code § 271(f). [footnote omitted] The per diem shall be \$300 for each day of meetings attended by the eligible members or \$200 if the meeting lasts for less than approximately two hours.

There shall be no per diem for preparation work; ~~and there shall be no per diem for or expense reimbursement related to meetings of any subcommittees of the CTF-AC.~~ For each CTF-AC member who is an employee of a governmental agency of the State of California, trade association, or consumer group, payments for per diem and expense reimbursement related to the member's participation in the CTF-AC shall go to the member's employer unless the member can show justification for receiving these monies directly.

Eligible Committee members must seek reimbursement of travel expenses and per diem through the state's Travel Expense Claim (TEC) process. Completed TECs must be submitted to the Commission's Telecommunications Division for review. The Director of the Telecommunications Division will assign a designated staff member to review, and if appropriate, approve payment.

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Committee members shall not be eligible to receive intervenor compensation under Pub. Util. Code § 1801 et seq. for their work related to the CTF-AC.

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ATTACHMENT A

CHARTER

of the

PAYPHONE SERVICE PROVIDERS COMMITTEE

3. ARTICLE THREE: MEMBERSHIP

3.1 Members. *The board of directors of the PSPC shall be composed of seven members consisting of one representative of each of the following: a large or mid-sized local exchange carrier; a payphone association; a consumer organization, community based organization, senior group or individual with interest or expertise in the payphone area and universal service; disabled persons; the deaf or hearing-impaired community; the Commission's Office of Ratepayer Advocates. Until the Commission's Executive Director makes these appointments in accordance with Section 3.2, the* The persons serving as members of the PSPE Committee and TPIC on September 30, 2001 shall serve, beginning October 1, 2001, as interim members of the PSPC. ~~Notwithstanding Paragraph 6.1, the~~ The Chairs and Vice Chairs from the PSPE Committee and TPIC shall be coassigned to serve as Chairs and Vice Chairs of the PSPC on an interim basis. ~~As soon as practicable, the Commission shall establish the number and qualifications of members of the Committee, pursuant to Pub. Util. Code § 271(a), and designate the classes of membership, if any, whereupon selection shall proceed in accordance with Paragraph 3.2.~~

3.2 Selection. Upon the establishment by the Commission of the number and qualifications of members of the PSPC pursuant to Pub. Util. Code § 271(a), members shall be nominated by the organizations or constituencies they are to represent. The Commission's Executive Director shall select and

ATTACHMENT A

approve members, in accordance with procedures adopted by the *Executive Director Commission*.

....

3.8 Expenses and Per Diem. Members of the PSPC who are not employees of utilities, the Commission, or other governmental agencies of the State of California shall be entitled to reimbursement from the Committee Fund of reasonable expenses and/or per diem incurred in connection with their service on the Committee *or subcommittees of the Committee authorized by the Commission*, in accordance with Pub. Util. Code § 271(f). [footnote omitted] The per diem shall be \$300 for each day of meetings attended by the eligible members or \$200 if the meeting lasts for less than approximately two hours.

~~There shall be no per diem for preparation work; and there shall be no per diem for or expense reimbursement related to meetings of any subcommittees of the PSPC.~~ For each PSPC member who is an employee of a governmental agency of the State of California, trade association, or consumer group, payments for per diem and expense reimbursement related to the member's participation in the PSPC shall go to the member's employer unless the member can show justification for receiving these monies directly.

Eligible Committee members must seek reimbursement of travel expenses and per diem through the state's Travel Expense Claim (TEC) process. Completed TECs must be submitted to the Commission's Telecommunications Division for review. The Director of the Telecommunications Division will assign a designated staff member to review, and if appropriate, approve payment.

Committee members shall not be eligible to receive intervenor compensation under Pub. Util. Code § 1801 et seq. for their work related to the PSPC.

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6. ARTICLE SIX: OFFICERS

6.1 Three ~~Two~~ Officers. The PSPC shall have *three (3) ~~two (2)~~* officers, *two Chairs who shall be coassigned a ~~Chair~~ and a Vice-Chair, all both* of whom shall be members of the Committee. *The coassigned chairs shall be the members representing, respectively, payphone associations and disabled persons/ the deaf or hearing-impaired community.* The officers shall be elected by the members of the Committee to serve a term of one year, and they may be re-elected. An officer shall continue to hold office until a successor has been elected and assumed office. However, if an officer ceases to be the designated representative of a class or entity as described in Paragraph 3.3, the officer's appointment shall terminate upon the date that the officer's affiliation ceases.

6.2 Duties. The *Chairs ~~Chair~~* shall be the executive *officers ~~officer~~* and shall be responsible for the general supervision and direction of the affairs of the Committee. The *Chairs ~~Chair~~* shall preside at all meetings of the Committee. In the absence of the *Chairs ~~Chair~~*, the Vice-Chair shall perform the duties of that office. If the *Chairs ~~Chair~~* and Vice-Chair are unavailable for a meeting where a quorum nevertheless exists, the *Chairs ~~Chair~~* may appoint a temporary Chair for that meeting. The officers shall perform such other duties as from time to time may be prescribed by the Committee, with the assistance of the Telecommunications Division liaison, as needed.

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ATTACHMENT A

CHARTER

of the

UNIVERSAL LIFELINE TELEPHONE SERVICE TRUST

ADMINISTRATIVE COMMITTEE

1. ARTICLE ONE: NAME

1.1 Name. The name of this advisory board shall be the Universal Lifeline Telephone Service Trust Administrative Committee (ULTSAC or Committee).

2. ARTICLE TWO: PURPOSE

2.1 Purpose of the Committee. The purpose of the ULTSAC is to function, pursuant to Pub. Util. Code § 277(a), as an advisory board to advise the Commission regarding the development, implementation, and administration of the Universal Lifeline Telephone Service Trust (ULTS) program to ensure lifeline telephone service is available to the people of the state, as provided by the Moore Universal Telephone Service Act, Pub. Util. Code § 871 et seq., and to carry out program under the Commission's direction, control and approval.

2.2 Component Program: Universal Lifeline Telephone Service Marketing Board¹ (ULTSMB). The ULTSAC includes the ULTSMB. The ULTSMB is

¹ California Public Utilities Commission Decision (D.) 96-10-066 established the Universal Lifeline Telephone Service Marketing Working Group (ULTSMWG). D.97-12-105 concluded that the responsibilities of the ULTSMWG, as described in D.96-10-066 and as amended by D.97-12-105, were more consistent with those entities considered to be "advisory boards" to the Commission rather than with entities the Commission considered to be "working groups." Therefore, in order to better reflect

Footnote continued on next page

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responsible for advising the California Public Utilities Commission (Commission) concerning the marketing of the Universal Lifeline Telephone Service (ULTS) program in a competitive environment and serves as an adjunct to the Universal Lifeline Telephone Service Trust Administrative Committee under Pub. Util. Code § 277. The ULTS program provides subsidized basic telephone service to qualifying residential subscribers pursuant to Pub. Util. Code § 871 et seq.

Under the ULTS program, a ULTS customer may select any carrier from those that provide residential local exchange service in the customer's area.² The selected carrier may then submit a claim to the ULTS program for reimbursement. At the present time, there are approximately 3 million ULTS subscribers in California. The ULTS program is funded by a surcharge, as determined by the CPUC, on the end of the user's bill for telecommunications services. The purpose of the ULTS program is related to, but distinct from, the Commission's overall goal of a 95% subscriber rate for each residential customer group.³ The ULTS program is intended to provide affordable basic telephone service to all low-income households regardless of whether or not a particular low-income household belongs to a customer group with a 95% subscriber rate. Success by the ULTS program in providing telephone service to low-income households shall, in turn, help achieve the overall goal of a 95% subscriber rate for all residential customer groups.

the ULTSMWG's responsibilities, D.97-12-105 changed the name of the ULTSMWG to the Universal Lifeline Telephone Service Marketing Board, also known as the ULTSMB.

² Carriers providing residential local exchange service are designated according to the rules adopted in D.95-07-050.

³ See D.96-10-066, mimeo., p. 217.

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The ULTSMB's advice and recommendations to the Commission shall focus on achieving the ULTS program goal of providing basic telephone service to all qualifying low-income households. Since the funds available for marketing initiatives recommended by the ULTSMB are limited,⁴ the ULTSMB shall prioritize its recommendations to reflect the most pressing needs of the ULTS program, including proposals for expenditure of 80% of the marketing budget on campaigns designed to bring basic telephone service to qualifying households currently without telephone service.

The ULTSMB's proposals for expenditure of the remaining 20% of the marketing budget shall be aimed at closing the gap between the total number of households with phone service who qualify for the ULTS program and the number of such households that actually use the program, consistent with the mandate of Pub. Util. Code § 871.5(c).⁵

The ULTSMB may also make recommendations in its Annual Report to the Commission on: (1) how to use existing funding levels for the ULTS marketing program to reduce the total number of households that qualify for ULTS that are without phone service and (2) how to narrow the gap between the total number of households with phone service who qualify for the ULTS program and the total number of such customers who actually use the program.

⁴ The total budget supporting the ULTSMB and implementation of its Commission-approved marketing recommendations cannot exceed the average of the annual ULTS marketing expenses reimbursed to all carriers for the last three years that carriers provided ULTS marketing services. (See D.96-10-066, mimeo., p. 233.)

⁵ Pub. Util. Code § 871.5(c) states that "Every means should be employed by the commission ... to ensure that every person qualified to receive lifeline telephone service is informed of and is afforded the opportunity to subscribe to that service."

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3. ARTICLE THREE: MEMBERSHIP

3.1 Members. *The board of directors of the ULTSAC shall be composed of seven members consisting of one representative of each of the following: a large or mid-sized local exchange carrier; an inter-exchange carrier; a competitive local exchange carrier; two consumer organizations, each of whom represents a different constituency, based on geographic or economic criteria, on language, or on other criteria which reasonably influence lack of access to basic telephone service; community based organizations; the Commission's Office of Ratepayer Advocates. Until the Commission's Executive Director makes these appointments in accordance with Section 3.2, the* ~~The~~ *The persons serving as members of the ULTSAC and ULTSMB on September 30, 2001 shall serve, beginning October 1, 2001, as interim members of the Committee. As soon as practicable, the Commission shall establish the number and qualifications of members of the Committee, pursuant to Pub. Util. Code § 271(a), and designate the classes of membership, if any, whereupon selection shall proceed in accordance with Paragraph 3.2.*

3.2 Selection. Upon the establishment by the Commission of the number and qualifications of members of the ULTSAC pursuant to Pub. Util. Code § 271(a), members shall be nominated by the organizations or constituencies they are to represent. The Commission's Executive Director shall select and approve members, in accordance with procedures adopted by the ~~Executive Director Commission~~.

....

3.8 Expenses and Per Diem. Members of the ULTSAC who are not employees of utilities, the Commission, or other governmental agencies of the State of California shall be entitled to reimbursement from the Committee Fund of reasonable expenses and/or per diem incurred in connection with their service on the Committee *or subcommittees of the Committee authorized by the*

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Commission, in accordance with Pub. Util. Code § 271(f). [footnote omitted] The per diem shall be \$300 for each day of meetings attended by the eligible members or \$200 if the meeting lasts for less than approximately two hours.

There shall be no per diem for preparation work; ~~and there shall be no per diem for or expense reimbursement related to meetings of any subcommittees of the ULTSAC.~~ For each ULTSAC member who is an employee of a non-State governmental agency, trade association, or consumer group, payments for per diem and expense reimbursement related to the member's participation in the ULTSAC shall go to the member's employer unless the member can show justification for receiving these monies directly.

Eligible Committee members must seek reimbursement of travel expenses and per diem through the state's Travel Expense Claim (TEC) process. Completed TECs must be submitted to the Commission's Telecommunications Division for review. The Director of the Telecommunications Division will assign a designated staff member to review, and if appropriate, approve payment.

Committee members shall not be eligible to receive intervenor compensation under Pub. Util. Code § 1801 et seq. for their work related to the ULTSAC.

....

(END OF ATTACHMENT A)